(Testimony of Henry Lester Pineda.)

them on the side of the case where the labels were on.

Q. Then what happened to the cases?

A. Then we started putting covers on them.

Q. What happened to the other eggs that had gone into the cooler?

A. We saved those for Colonel Hand so when he came back and examined them, he would see the same ones.

Q. You what?

A. Saved them for the next inspection.

Q. For the next inspection?

A. That is right.

Q. Did you use the same 70 cases again that went into the cooler?

A. Well, I don't know whether the next order called for 70 or not. This order called for so many for the inspector to come in and see; the next order might call for 50.

The Court: I will excuse the jury now. There are a number of matters I propose to take up.

(Thereupon a recess was taken until two o'clock p.m.). [1012]

Afternoon Session, January 30, 1946, 2 p.m.

The Court: Waive the roll call, stipulating and agreeing all the jurors are in the box. Proceed.

HENRY LESTER PINEDA,

recalled.

Cross Examination (Resumed)

Mr. Faulkner: Q. Mr. Pineda, on this occasion when Colonel Hand, who is now back in the court room, was out there inspecting these 75 cases of eggs where you have testified that certain eggs which you have called fresh eggs were laid out on the floor, those cases that the Colonel saw when he came into the plant of Nye & Nissen had been there that day, had they not? A. Yes.

Q. Out of his sight and off of the floor and in the cooler were the so-called cold storage eggs?

A. That's right.

Q. They had been there since the day before, is that right? A. Yes.

Q. In the movement of what you have termed fresh eggs into that cooler, you put those into another cooler, did you not? A. Yes.

Q. You started that operation after Colonel Hand had indicated that the eggs were going to pass, isn't that right? A. No.

Q. Did you start the movement of these so-called fresh eggs before Colonel Hand had indicated that the eggs that he was inspecting were going to pass inspection? A. Yes, before. [1013]

(Testimony of Henry Lester Pineda.)

Q. In other words, you anticipated that the fresh eggs would pass? A. Yes.

Q. How many dollies did they have in the plant of Nye & Nissen on Townsend Street?

A. Either two or three; I knew we had two.

Q. Were they ball-bearing and rubber wheels, or were they the type of dolly that would make considerable noise as it passed across the floor?

A. Well, I don't know how much, whether it made a lot of noise, maybe I was used to the noise, but they had no rubber wheels.

Q. It made a lot of noise, too, didn't it?

A. It might have.

Q. Were these fresh eggs that were on the floor scattered on the floor in some sequence on the floor in flats or piled on flats so dollies were put under them and they were then moved to another cooler?

A. Yes.

Q. Not the cooler where the cold storage eggs were? A. No.

Q. Now, Mr. Pineda, when this substitution that you speak of was made and the eggs were taken out of the cooler, these eggs which you have referred to as cold storage eggs, they wouldn't be on that floor more than ten or fifteen minutes, would they, before Colonel Hand would come out and stamp them up?

A. I don't know how long they would be there. You see, we started taking—as soon as he candled maybe the first case of eggs we started taking one tray of eggs in the cooler and [illegible] case, a

(Testimony of Henry Lester Pineda.)

tray of storage eggs. These would be [1014] already glued on so if he comes out he would see these cases already glued. He would take some of the ones that are fresh. Until we saw it is going to pass, then we come through with the last two trays.

Q. So that practically from the very beginning, from the very beginning of his inspection in this room, which is really part of the main floor of Nye & Nissen, you were starting the transfer of eggs?

A. Yes; after he finished the first case of eggs.

Q. What period of time, Mr. Pineda, would you say would be a fair estimate of the time that elapsed between the time that you brought your first case out of the cooler, that is, these cold storage eggs out of the cooler, until Colonel Hand stamped those marks?

A. I guess it would be over half an hour, I guess.

Q. In the very beginning of that incident, when those cases which you say you identified as having come from an icehouse, those eggs were all open, were they not? A. Yes.

Q. All the cases were open and they were put out on the floor in order to dry out, weren't they?

A. That's right.

Q. Now, when those cases went back into the cooler and remained all night, when you brought them out there they were in the same condition as a cold storage egg, weren't they? A. No.

Q. Weren't they? If a case of eggs remains in a cooler, in that cooler in the Nye & Nissen plant

(Testimony of Henry Lester Pineda.)

over night, it will be [1015] the same temperature as the case of eggs out of an icehouse?

A. Well, they are covered now. I never had a chance of looking at them.

Q. You testified that all those cold storage eggs, when they came they had the tops on, or off?

A. The top of the wooden box. I also said the strips of paper—the majority of the case was glued on.

Q. These eggs had been in the cooler?

A. Yes.

Q. Of the Nye & Nissen plant the night before, all of the day until you made the substitution and part of the preceding day, had they not?

A. Yes, but I don't think our place is just as cool as the Merchants Ice and National Ice.

Q. What is the temperature of the Nye & Nissen cooler? A. I don't remember.

Q. Don't you know it is the exact temperature at which eggs are supposed to be kept, either in Nye or Nissen's plant or in an ice and cold storage plant?

A. No, not necessarily, because the time I went down there to the Merchants Icehouse I remember it was pretty cold there, and all of us didn't like the idea of staying inside too long, and we come out to warm up; while at Nye & Nissen's plant I could stay there three or four hours without coming out; I have been there two and a half hours or three hours without coming out.

Q. You were down in the Merchants Ice & Cold

(Testimony of Henry Lester Pineda.)

Storage Company working a whole afternoon when you were down there? [1016]

A. I said we came out a few times to get warmed up.

Q. You never mentioned coming out of that plant once, did you?

A. Maybe you didn't ask me. I answered part of that, but when Mr. Hippeli asked me——

Q. If he had asked you you would have told him?

A. He asked me and I said I did.

Mr. Hippeli: I object to that. The witness testified that they came out of the cooler to warm up.

Mr. Faulkner: I am talking about the ice plant at Merchants Ice & Cold Storage.

Mr. Hippeli: He said he came out of the cooler to warm up.

The Court: Proceed.

Mr. Faulkner: Q. Did you testify at any time in this court room that when you were down at that Merchants Ice & Cold Storage Company on the occasion when Mr. Smith's name was mentioned, that you went out of that cooler——

A. Yes.

Q. To warm up? A. Yes.

Q. When did you testify to that, yesterday?

A. I don't recall. You would have to look that up.

Q. Is there any question in your mind, at all, Mr. Pineda, having in mind the experience that you have indicated in your testimony, that when

(Testimony of Henry Lester Pineda.)

you took 65 cases of eggs out of a cooler in this plant that had been in their plant over night, part of that day, and part of the preceding day, and put them on [1017] the floor of this plant, those eggs would sweat in ten minutes, is there any question about that?

Mr. Pratt: I object to that as argumentative.

The Court: Objection sustained.

Mr. Faulkner: Q. You have testified you have seen the handling of eggs over a long period of time in the plant of Nye & Nissen. A. Yes.

Q. You have testified cold storage eggs will sweat.

A. Yes.

Q. And they will form moisture and mildew?

A. Yes.

Q. I will ask you this question, if it is not a fact that a case of eggs has been in a cooler for a period of twelve or fifteen or eighteen hours and is brought out into the open of that plant, that it will likewise sweat?

A. Not very much. We kept leakers there sometimes four or five days and they came out and they didn't sweat much.

Q. What temperature is that cooler?

A. I don't know, I said.

Q. What temperature is the Merchants Ice & Cold Storage? A. I don't know.

Q. You just surmise from your own experience with the Merchants Ice & Cold Storage plant that the cooler in Nye & Nissen's is warmer? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. The incident in the Merchants Ice was in 1940? A. Yes.

Q. The incident when Colonel Hand was involved was in what year? A. 1941.

Q. A year later? A. Yes.

Q. You have a distinct recollection of the temperature of the [1018] two places?

A. I figured because we went out to get warmed up that the other place was more.

Q. Is there any question whether the cases of eggs you say were in that cooler, when they were brought out there to fool Colonel Hand, and the other cases that went out, that the tops of those cases would be cold?

A. I never opened them. Even if they are cold, the girls can candle them.

Q. Isn't it a fact the tops of cases of eggs that would be put in the cooler on that day, and on the following day—isn't it a fact when they came out at the Nye & Nissen plant in the manner that you have testified to, that those boxes were cold boxes of eggs? A. The boxes?

Q. Yes. A. Sure, the boxes are cold.

Q. And the top of the box would be cold?

A. I removed the top, the filler.

Q. Yes. A. Yes.

Q. Isn't it a fact the eggs were opened, that the tops had been taken off?

A. The wooden tops were taken off, yes.

Q. And all they had was a cardboard filler?

A. A cardboard filler, a strip.

(Testimony of Henry Lester Pineda.)

Q. And was this strip over the filler or under the filler?

A. Over the filler.

Q. So that the eggs that you have described had been in an open box, or a cooler, rather, in Nye & Nissen's plant for at least fifteen hours, hadn't they?

A. Yes. [1019]

Q. Each one of those cases that had just come out of the cooler were handled by Colonel Hand when he put his stamp on, weren't they?

A. What do you mean, "handled"? He doesn't have to touch the eggs. All he has to do is stamp on the middle of the paper, he doesn't touch the case.

Q. He didn't even touch it?

A. It is not necessary, he doesn't have to.

Q. Did he touch it?

A. Not that I recall.

Q. Do you say a man can handle 65 cases of eggs and then stamp them, without touching a case of eggs?

A. Yes, because that went on top of the case of eggs. When we closed the paper around there we would paste—the day before, even on the morning before that we finished the storage eggs, we glued them together and then when Colonel Hand came we put these cases outside, we had a wet brush to go over the top, and then Colonel Hand would think we had just pasted them, that was when he put his stamp on. Sometimes it would be too much paste and when he put his stamp on we would have to wide it off so there wouldn't be too much paste, and

(Testimony of Henry Dester Pineda.)

the stamp would make more or less of an even appearance.

Q. That was all done in the cooler?

A. No, that was done outside. That is what we were supposed to do with the other cases, that was done outside on the floor.

Q. But most of the cases in the cooler had already been pasted together?

A. Yes, but that is the reason we got a wet brush or [1020] a wet rag and went over them.

Q. So in addition to the other things you are supposed to have done, you are supposed to have taken either the brush or a wet rag——

A. Yes, a brush and a rag.

Q. You did not do it in the cooler; you did that out on the floor? A. Yes.

Q. With Colonel Hand in a room right there?

A. Yes. Sometimes Colonel Hand as well as other inspectors.

Q. There was only one inspector on this occasion? A. On this occasion, yes.

Q. The inspector was Colonel Hand?

A. Yes.

Q. He is the man in the room? A. Yes.

Q. When he came out he would stamp those cases and would not touch a single case?

A. I don't know.

Q. If he touched them he would have known they had just come from a cooler?

A. Not necessarily, no.

Q. Why?

(Testimony of Henry Lester Priedt.)

A. Because I have handled a lot of cases that have been in our cooler a long time.—

Q. A case of eggs that came out of that cooler and is kept on the floor of the plant in ten minutes would start to sweat? A. A little bit.

Q. You testified this morning when I asked you about the antecedents of these eggs that you, from your experience, could tell that those eggs that you placed ~~in~~ the cooler had been in an icehouse.

A. Yes. [1021]

Q. How was it that you could tell that those eggs had been in an icehouse without Colonel Hand knowing that? A. He didn't see them.

Q. He stamped them?

A. Not the top of them. He saw the cases, but not the eggs.

Q. In other words, your testimony that you have heretofore here, that you knew that these eggs had been in an icehouse, was from your experience with the eggs?

A. Naturally, when I open up the case I have to take everything off, all the tops off. Then they had on the storage pack a heavy paper, I had to make sure it was back on the outside of the case so it wouldn't cover the case over.

Q. Oh, I see.

A. The heavy paper—if I hadn't seen the icehouse mark or if I hadn't touched the eggs I wouldn't have known they were from the icehouse always.

(Testimony of Henry Lester Pineda.)

Q. The eggs were all there for Colonel Hand to see?

A. Yes, but he has other places to go besides there.

Q. Would he see the top? A. Yes.

Q. He would see the sweat on the filler, wouldn't he?

Mr. Hippeli: I object to that as assuming something not in evidence. There is no evidence——

Mr. Faulker: Withdraw the question. This sweating you say would occur in ten minutes would be observable, wouldn't it?

A. You said ten minutes, I didn't.

Q. You did not say ten minutes? A. No.

Q. Didn't I just ask you, Mr. Pineda, if it is not a fact if you brought those eggs out of a cooler and put them on the floor of Nye & Nissen's plant and they would remain on the floor, in ten minutes they would start to sweat?

A. No. That is why I don't think our cooler was that cold.

Q. How long would it take a case of eggs that had been in that cooler in Nye & Nissen's plant on Townsend Street, when taken out of that cooler and put on the floor, to begin to sweat?

A. I don't know. I never timed it.

Q. How long would it take for moisture to form on a case of eggs that had just been removed from the cooler, how long after it had been removed——

Mr. Hippeli: I object to that, if the Court

(Testimony of Henry Lester Pineda.)

please. If he wants to inquire about this particular case of eggs——

The Court: Read the question.

Mr. Faulkner: That is not an objection. That is a harrangue.

Mr. Hippeli: My objection was that the question was immaterial.

Mr. Faulkner: You did not say any such thing. You said if I want to continue——

The Court: Read the question.

(The record was read.)

The Court: Proceed.

Mr. Faulkner: Q. Will it sweat at all?

A. A little, yes. [1023]

Q. When it does would you be able to see it with your eyes?

A. Not if there is a mape on it.

Q. What is that?

A. Some of them are mapes and some are flats.

Q. Do you mean a cardboard flat?

A. Yes.

Q. How about the exterior of the wooden case?

A. I never notice that the wood sweats.

Q. Were the cases stamped on the outside as well as on this cross-piece of paper?

A. They were stamped on the label, yes.

Q. On this occasion you say Colonel Hand stamped them three times?

A. That's right, three times.

Q. In the entire stamping you never saw him at any time handle a case of eggs?

(Testimony of Henry Lester Pinola.)

A. Not that I recall.

Q. You watched him stamping them all the time?

A. No, I didn't watch him stamp. As soon as he started stamping I started covering them.

Q. Did you observe what he did, at all?

A. No.

Q. If I understand, these so-called eggs that you have referred to as Fresh, you referred to them as Fresh eggs because they were not processed?

A. That is one of them, one of the reasons, yes.

Q. That is one of the reasons? A. Yes.—

Q. The eggs which you call Cold Storage eggs, you referred to them as Cold Storage eggs because they were processed?

A. That is not the only reason, no, because Fresh eggs can be [*324] processed.

Q. That is one reason?

A. That is one of them, yes.

Q. Can you tell a processed egg from an unprocessed egg?

A. Well, I used to be able to, yes. It is kind of hard. I know a lot of times the inspectors came there and we gave them processed eggs, and they would turn them down.

Mr. Faulkner: I ask that it all go out. I asked him if he could tell a processed egg.

The Court: Read the question and the answer.

(Record read.)

(Testimony of Henry Lester Pineda.)

The Court: The question and the answer may stand.

Mr. Faulkner: Exception.

Mr. Hippeli: May he complete the answer?

The Witness: These inspectors would claim these were processed eggs. Finally they would make Mr. Moncharsh admit it, and Mr. Moncharsh would say, "I am doing you a favor by processing your eggs, they will keep longer." The inspector always said to him, "Don't do us any favors. When we want processed eggs we will ask for them." They even brought down some ether and tried the ether test.

Mr. Faulkner: I ask that that go out.

The Court: It may go out. Proceed.

Mr. Faulkner: All of it, your Honor.

The Court: The last part volunteered by the witness may go out. [1025]

Mr. Faulkner: The last part?

The Court: The court has ruled, it will go out. Let the jury disregard it.

Mr. Hippeli: May I say something, your Honor? I would like to observe that the ether test to which he was referring is one of the scientific ways of determining whether or not an egg is processed, or not.

The Court: That is no answer to the question. Proceed.

Mr. Faulkner: Q. These cases of eggs that had been laid out for Colonel Hand, for him to observe on that particular day in February, 1941,

(Testimony of Henry Lester Pineda.)

which are the type of eggs that you call Fresh, do you know whether the order to be filled for the Army called for processed eggs, or not?

A. No, I don't. I never saw the order.

Q. Now, the 65 or 70 cases, whichever it may have been, after they had been removed you say cold storage eggs were substituted; you say that on that particular occasion, within a short time after that, Colonel Hand came into the plant again?

A. Yes.

Q. And when he was inspecting eggs which were to be wrapped in a similar form, namely, with paper that is joined together in the center over the flats of eggs, and they were taken away in that type container, is that right? A. Right.

Q. Nye & Nissen were filling another order, isn't that right? A. That's right. [1026]

Q. You remember Colonel Hand coming into the plant on this second occasion, do you?

A. Yes.

Q. Was he alone?

A. I don't recall if he was alone, or not.

Q. Did you see him inspect some eggs then?

A. By inspecting, do you mean candling them?

A. Inspecting the cases of eggs. They candled them later.

A. Yes, I saw him inspecting cases of eggs.

Q. Did you take him around when he inspected the cases of eggs before he candled them?

A. He told me which cases he wanted and we brought them to him.

(Testimony of Henry Lester Pineda.)

Q. What would he say in your presence about that? A. He told us which cases he wanted.

Q. How many cases did he pick out?

A. I don't recall the exact amount, it all depended on the order.

Q. These are the same eggs that had been tendered to him about a week before? A. Yes.

Q. You observed where those eggs were during that interval of a week?

A. Yes. Like, as soon as he left from the first inspection, we took them out of the cooler.

Q. Where did you put them?

A. Placed them next to the candling room.

Q. They remained there until his next visit?

A. Well, not exactly until then, but a little before then, we spread them out.

Q. Was he in the plant between the time he inspected this [1027] first lot that you have described this morning and this afternoon and the time that he came in to inspect the second lot, where you had the same eggs to tender to him?

A. I don't know.

Q. Do you remember seeing him at all?

A. No, I don't recall.

Q. Do you remember whether or not in that interval other Army inspectors were in there?

A. I don't know. They came and went very often, I couldn't tell you if anyone came.

Q. On this occasion were the eggs then laid out again, 65 or 70 cases, on the floor?

(Testimony of Henry Lester Wolfe.)

A. Oh, I don't think there were 65 or so, but a certain amount of these eggs were used.

Q. How many on the second time?

A. I don't recall.

Q. What is your nearest approach that you can give?

A. Well, might have been the whole 70, might have been just 50. I mean it was around 50. It might have been the whole thing again, I don't know.

Q. Well, you would make some selection of sample cases?

A. No, I didn't make selection of any.

Q. You saw him do that? A. Yes.

Q. You saw him select from the same quantity of eggs that he had selected from before?

A. Yes.

Q. He then went into the candling room?

A. Yes.

Q. That same time did you go through the same procedure of taking those eggs out and putting them in the cooler and taking some other eggs out from the cooler and substituting them for those eggs? A. That's right. [1028]

Q. You participated in all that? A. Yes.

Q. What kind of eggs did you substitute for these on the second occasion?

A. We had some more bought from the icehouse.

Q. Do you remember *buying* them again from the icehouse?

(Testimony of Henry Lester Pineda.)

A. I remember opening them up.

Q. You remember examining the eggs?

A. What?

Q. You saw the eggs in those containers when you opened them? A. Yes.

Q. You saw the tags? A. Yes.

Q. You saw they were processed?

A. Yes.

Q. At any time did you ever examine these other eggs to see whether they had been processed or not?

A. When I opened up the cases, we have to take everything off, as I said before, we have the pull the heavy paper to the side so it doesn't fall right back, so we can see the eggs.

Q. That is what you are referring to as the Cold Storage eggs? A. Yes.

Q. All these eggs that were not cold storage eggs, did you ever observe those eggs definitely, yourself? A. When we first put it up, yes.

Q. Were they processed? A. No.

Q. They were not. So on this occasion when Colonel Hand went in to inspect the samples he had taken from what you have referred to as Fresh eggs, and while he was in there you started the substitution egg in on that second occasion of eggs which you say had come from an icehouse——

A. That's right. [1029]

Q. Therefore, there would have been two occasions in that month where you had seen eggs come into the plant of Nye & Nissel from an icehouse? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Where you had broken them down and observed them and had seen they were processed?

A. That's right.

Q. You even observed the tags on them?

A. Yes.

Q. Do you remember which icehouse it was?

A. No, I do not.

Q. Again, when Colonel Hand—before he even indicated that the eggs would be accepted, you started the substitution?

A. Yes, but we always left enough fresh eggs out there in case he wanted some more.

Q. Mr. Pineda, the moment you made the substitution of a single case if Colonel Hand came out for another case he might pick that one, might he not?

A. Yes, but we only had them glued on, I don't think any inspector would say that "I want that," because unless they knew something was wrong—if nothing was wrong they would just as soon grab any case, they wouldn't try to make things harder for us.

Q. Mr. Pineda, the man has taken this sample, he has walked over to the candling room; as soon as he gets into the candling room you started taking those fresh eggs and putting them in the cooler and taking other cases of eggs out of the cooler and putting them out on the floor? A. Yes.

Q. After he had candled a case of eggs, how many cases would you have made a substitution of?

(Testimony of Henry Lester Pinola.)

A. After he finished candling [1030] all the cases?

Q. No; one case.

A. I don't think we ever started—we would wait until he sampled one case of eggs. Then we just——

Q. Would you wait until he sampled at least one case?

A. Almost one case of eggs. I would get the signal from Mr. Goddard and then we would go to work. [1030-a]

Q. That signal would be based upon how much time the Colonel had spent?

A. That is something you will have to ask Mr. Goddard.

Q. I have asked him. I know all about that. At all events, on some occasion you would be told to start making the substitutions? A. Yes.

Q. How long after the first substitution was made would Colonel Hand come out and say that he had completed his inspection and that the eggs were acceptable?

A. Well, I think he would say it before they were finished. Mr. Goddard would ask Colonel Hand, or whoever was inspecting—he would ask him if the order passed so they could start sticking the papers together.

Q. Have you ever been in the plant of Nye & Nissen at any time in your life when Colonel Hand said that an order of eggs had passed until he had

(Testimony of Henry Lester Pinsla.)

candled every last egg in the last case he took for candling?

A. I don't know whether it was Colonel Hand or not, but I know quite a few people have okehed it. Quite often got the stamp from some of them.

Q. Aren't we talking about a situation where Colonel Hand was present?

A. Yes, but I can't recall whether he waited until the last case or not.

Q. Do you remember any incident—I give you the entire period of time you worked there—that Colonel Hand said an order of eggs had passed until he had candled the last egg in the last box?

A. I can't say that because I don't know. [1031]

Q. Then you have no definite recollection that at any time on either of those occasions that Colonel Hand ever said that those eggs passed inspection before he had completed his work, have you?

A. Well, I wouldn't know, because I got my orders to start sticking up, glueing the paper, from Mr. Goddard, who would put his head under that thing or go inside the candling room and ask about it, and then he would come and he would say, "Henry, go ahead sticking them on."

Q. You do not know what happened in the candling room? A. No.

Q. But Mr. Goddard would tell you to start bringing those other eggs down on the floor?

A. Yes. Sometimes he would stick his head under the curtain and talk to whoever was inspecting and they would tell him.

(Testimony of Henry Lester Pineda.)

Q. On this second occasion, similar to the first, the eggs you brought out in one substitution were eggs that were in a cooler, is that right?

A. That is right.

Q. And they had been in a cooler for at least fifteen hours, had they not?

A. Not all of them, no.

Q. Some of those eggs were put in——

A. Some the night before, some in the morning, and sometimes the girls had finished the inspection an hour before the Colonel came. It all depends on how busy they are during the day.

Q. On the first occasion all the eggs had been candled and put in the cooler over night?

A. Yes.

Q. On the second occasion you do not remember whether that was [1032] true or not?

A. Sometimes it was. We didn't do it two or three times. We did it a long time there.

Q. Are you talking about an incident that you have any recollection of at all? A. Yes.

Q. Confining yourself to that incident, the second incident where Colonel Hand was involved, were those eggs in a cooler over night?

A. I don't know. See, I had quite a few jobs to do. I don't know whether Mr. Menges put some in the cooler or whether they left some on the floor, if I stayed on the bench, if that was the only job in the plant.

Q. So you don't know whether all the eggs were in the cooler? A. No.

(Testimony of Henry Lester Pineda.)

Q. Were any of them in the cooler?

A. Yes, because we took them out after a while.

Q. On your cross-examination before lunch did you not describe in detail that the reason that the eggs were put in the cooler were to keep them out of the sight of Colonel Hand?

A. Yes, but I said not the night before. You asked me if all those cases were in the cooler the night before. That is what I am trying to tell you. I don't know whether they were all in the cooler the night before, but when Colonel Hand came in the plant the next day they were in the cooler.

Q. You do not know when they were put in there? A. That is right; I don't know.

Q. But they had all been prepared?

A. Yes. [1033]

Q. And they all had these papers on them?

A. That is right.

Q. And most of them had been stamped together? A. Yes.

Q. And when you went in and marked them with wet brushes and cloths, they were all in the cooler? A. No, they were not.

Q. Were you doing that outside? A. Yes.

Q. So you were sealing them up outside on the floor or on the flats, is that right?

A. Yes, when Mr. Goddard gave us the order, whoever—like that Colonel said, "It's all right to start sticking them up," we would do it.

Q. On any of these occasions you have described two occasions now when Colonel Hand was

(Testimony of Henry Lester Pineda.)

inspecting eggs—on any occasion did he leave the candling booth to come out on the main part of that building?

A. No, not this time, I don't recall.

Q. On any occasion, on those two instances when Colonel Hand was involved, did his assistant ever walk out from the candling booth to the main floor of the building? A. No.

Q. On any of those occasions did he have more than one assistant with him?

A. I don't recall how many he had.

Q. You do not recall. If he had another, you do not know where he was, do you?

A. Well, I have seen inspectors go in there sometimes with three assistants. They all stayed in the candling room.

Q. Have you ever seen an Army inspector, whether his name was Hand, Foster, or anything else, with two assistants go in and have the two assistants and the inspector remain in the candling [1034] room during the entire period of the inspection after the cases were selected?

A. Yes.

Q. When? Give me an incident.

A. Oh, I can't tell you. I have seen them—they never stayed outside unless like this time when the Colonel had told this man, his driver, to stay out there. Usually they all went together.

Q. Tell me some instance in some month, in some year, where you know the name of the inspector, where he came into that plant with two

(Testimony of Henry Lester Pineda.)

assistants and the inspector, the ranking officer, and the two remained in the candling room the entire time?

A. I have seen this Colonel Foster go in there sometimes with three men, but I can't tell you the year, and they all stayed in there. I even asked —I thought he was teaching those men how to candle. He was explaining—that was one afternoon—he was explaining something to them.

Q. Would you be back there seeing them?

A. I could see right through the light.

Q. Right through the light?

A. Through the curtain, certainly.

Q. And you could see him explaining to those men?

A. He was talking to them. I don't know whether he was explaining or not. He was talking, and in the meantime he was candling cases of eggs.

Q. This was a regular Army inspection?

A. A regular army man, uniform and all. [1035]

Q. You do not remember the year?

A. No.

Q. And therefore you would not remember the month, would you?

A. No, but, as I say, whenever they had one assistant or two they all stayed inside, the whole group stayed inside.

Q. Now, in the movement of these eggs in and out of the cooler, in addition to the packing of the eggs on a tray and the placing of a dolly under the tray, you also had to open the cooler door, did you not? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Was that a loud sounding door or could you open that without attracting attention with relation to noise?

A. Oh, you can open it without attracting attention.

Q. Is it not a fact that the doors to the coolers had to be slammed to close?

A. If you want them closed tight, yes, but we didn't have to close those tight because we had to keep coming in and out.

Q. So you didn't close them tight? A. No.

Q. Is that right? A. Yes.

Q. Did you leave them ajar?

A. You can close them—they have a lever you pull toward you, and if you really wanted to close them easy, you just open that lever, and then when you put the door as far as it will go, then push it away from you, rather, and it will be closed.

Q. Would you open and close them easy?

A. Yes, we wouldn't make too much noise.

Q. In other words, the effort was to minimize the noise, is [1086] that right?

A. To a certain extent, but just because the Colonel is in there candling doesn't mean we stop operating the plant. We had to pull lats and everything for the girls to candle, too, you know. We had to [illegible] while he was there a fellow would come in for eggs or so—maybe our driver would come. There was no such thing as everybody keeping quiet because the Colonel was inspecting eggs.

(Testimony of Henry Lester Pineda.)

Q. On these occasions you described very clearly here, were you engaged in other jobs, too?

A. I wasn't engaged in other jobs, but how does the Colonel know we were doing some other work for the plant or not?

Mr. Faulkner: I ask that that go out, your Honor.

The Court: What the Colonel knew may go out.

Mr. Faulkner: Q. Mr. Pineda, you and Mr. Goddard were the ones that were engaged in this activity? A. Mr. Nix and Mr. Menges.

Q. Mr. Nix and Mr. Menges? A. Yes.

Q. When these other eggs have to be handled, what men did they have to handle those?

A. The girls would work slow when these inspectors were there. All we had to do was throw a case of eggs under the light there. They took their time and we—I mean Menges and I told them in case there was no case in front of their light not to ask for anything, to do something else.

Q. You would tell them that? A. Yes.

Q. So part of the preparation of this was a conversation with [1037] the girls in the plant to work slowly, is that right?

A. Yes—not necessarily slowly, but in case there was no eggs outside to take their time and do something else.

Q. Did you tell that to the girls?

A. Yes, the girls I was working with, yes.

Q. Did you ever give any direction to the girls in the candling room? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Isn't the man who gave the direction to the girls in the candling room Mr. Menges?

A. Not all the time, no, because he wasn't there all the time.

Q. He was there on this occasion, wasn't he?

A. Yes, but the idea is he isn't going around telling every girl what to do. He will say, "You tell your girls or I will tell mine."

Q. Mr. Pineda, when Mr. Menges is in that candling room or in those premises he is the man who directs those girls and nobody else, isn't that right?

A. Not necessarily. There were times when the girls wouldn't talk to Mr. Menges. They had to get one girl to do the talking because they wouldn't talk to that man. They used to give me the orders to tell the girls because they wouldn't talk to him. That is the reason why they aren't working there now.

Q. That is the reason you are not working there now? A. The girls.

Q. What? A. The girls.

Q. What girls?

A. The old-time girls that were working there [1038] before, because they wouldn't talk to Mr. Menges.

Q. Because they wouldn't talk to Mr. Menges?

A. That is the reason they aren't working.

Q. But they would talk to you?

A. Yes, they would. They wouldn't talk to Mr. Menges, so they had to appoint one girl to do the talking, and this girl was more or less friendly

(Testimony of Henry Lester Pineda.)

with Mr. Menges, but that was the only girl that would talk to him.

Q. Mr. Pineda, one of the reasons you are not working there now is you talked to the girls too much? A. Oh, I quit. I wasn't fired.

Q. You quit? You weren't fired?

A. That is right.

Q. You know how close you came, don't you?

A. To what?

Mr. Faulkner: I won't go into that, your Honor, because it is not the type of impeachment that would be permitted in this case.

Q. Do you remember, Mr. Pineda, an incident that you had that related to some eggs on Pier 16?

A. Yes.

Q. How many times were you ever down to Pier 16? A. Oh, quite a few times.

Q. Whose pier is that?

A. I don't recall the name. I just know there used to be a young Spanish checker down there. That is how I know it would be called that.

Q. So you remember the pier because you remember the Spanish checker?

A. That is one of the reasons, and I could read "16" in front of the pier. [1039]

Q. Do you remember the steamship company that operated it?

A. No. I am a longshoreman and I still don't know it.

Q. What?

A. I am a longshoreman and I still don't know

(Testimony of Henry Lester Pineda.)

it. I see them every day but I still don't recall the name of the company that operates the piers.

Q. Have you finished your answer?

A. Yes.

Q. You don't remember the name of the company that operated the pier? A. No.

Q. But you remember an incident that occurred on the pier? A. That is right.

Q. And you testified to it in this courtroom?

A. Yes.

Q. When did the incident occur?

A. I would say in the summer—some time in the summer of 1940. Maybe it might have been May—April or May.

Q. And you went down to that pier, did you, with some eggs?

A. No, I went down to the pier and I met our Petaluma driver down there.

Q. What was his name?

A. Harry Smiley.

Q. Who else did you meet down there?

A. Mr. Berman, Mr. Andrade—let's see who else was down there—Mr. Nix and myself.

Q. So that Mr. Berman, Mr. Pineda, Mr. Andrade, Mr. Smiley and Mr. Nix were down on the pier? A. That is right.

Q. Before you went to the pier had you ever seen the eggs before that you saw down there?

A. No. [1040]

Q. When you were down there did you see some eggs unloaded? A. I helped.

(Testimony of Henry Lester Pineda.)

Q. You helped unload them?

A. Yes, I helped.

Q. Were they in a truck?

A. Some were in the truck and some were in the trailer.

Q. Was it a Nye & Nissen truck? A. Yes.

Q. Do you know where the truck had come from? A. Yes.

Q. Where? A. Petaluma.

Q. How do you know that?

A. Because I talked to Smiley about it.

Q. In other words, you base the origin of the truck from a conversation with Mr. Smiley?

A. Part on the conversation with Mr. Smiley and part when I heard Mr. Moncharsh the night before you say that he was going up to Petaluma.

Q. Now, then, you heard this in connection with this trip to Pier 16, a conversation in which Mr. Moncharsh participated? A. That is right.

Q. What did Mr. Moncharsh say?

A. Well, Mr. Goddard and Mr. Moncharsh were talking about some cases of eggs, and Mr. Goddard told him to make sure Petaluma did it right and not mix up things like they did some time ago—I don't know whether he said the last time or not. He said he was going to see Mr. Langworthy to make sure things were all right.

Q. Who said that?

A. Mr. Moncharsh.

Q. He said what?

(Testimony of Henry Lester Pineda.)

A. He would go and see Mr. Langworthy and [1041] make sure everything was all right.

Q. Where were you when that conversation occurred? A. I was right outside of Mr. Goddard's office.

Q. You were outside his office?

A. Yes, waiting for a ride to go home.

Q. You were waiting for a ride with Mr. Moncharsh? A. Yes.

Q. And you overheard a conversation?

A. Yes.

Q. And Mr. Goddard said in substance to make sure the eggs were not mixed up or something?

A. Yes, make sure the order was placed right. By that I don't mean the candling of the eggs——

Q. Not what you guess, what were the words he used? A. That is what he said.

Q. What?

A. Make sure they were placed right so they didn't get mixed up like they did some previous time.

Q. Is that the only conversation that you heard?

A. That is right.

Q. And then you had a ride with Mr. Moncharsh who took you to Bayshore somewhere?

A. Yes, Mr. Goddard told me to be sure to report to Pier 16.

Q. And you did report? A. Yes.

Q. When you were down on that pier Mr. Moncharsh wasn't there?

A. He came down later, yes.

(Testimony of Henry Lester Pineda.)

Q. Some time during this period you saw Mr. Moncharsh on a pier on the water front, is that right? A. Yes. [1042]

Q. Had you ever seen him at a pier on the waterfront before?

A. Oh, I saw him quite a few times.

Q. Before that occasion? A. Yes, before.

Q. Did you ever see him after that occasion?

A. Yes.

Q. How many times would you say, Mr. Pineda, that you saw Mr. Moncharsh, the president of Nye & Nissen, on any pier on the San Francisco waterfront? A. How many times?

Q. Yes?

A. Oh, I would say, I guess, about twenty times more or less.

Q. And this was one of them? A. Yes.

Q. When this truck and trailer was unloaded you aided in unloading it? A. Yes.

Q. What did you do?

A. I placed the eggs according to the way Mr. Smiley told me to place them on the floor.

Q. When he told you how to place them on the floor who else was present?

A. Mr. Nix, Mr. Berman and Mr.—Tommy—Tom Andrade.

Q. How did he tell you to place them?

A. We were going three high with the cutouts and top them off with the samples.

Q. How do you know there were any cutouts in those cases?

(Testimony of Henry Lester Pineda.)

A. Because that is the way we went to all the trouble to get down there.

Q. Mr. Pineda, you have no idea what was in a single case of eggs on that pier, did you?

A. Yes, according to Mr. Smiley I have. [1043]

Q. Did you see a single egg?

A. No, I didn't.

Q. Did you observe them being candled?

A. No, I didn't.

Q. Did you observe the markings?

A. Yes, the stencil, yes—not any other markings I don't recall, but the stencilling, yes.

Q. Were the eggs grade marked?

A. I don't recall.

Q. Did they have a green, yellow or blue label on them?

A. I believe they had a red label.

Q. You believe they had a red label?

A. I believe so.

Q. What does that signify?

A. Usually signified a Grade B—but at the Army I don't think they were so particular about the label as long as they bore the Nye & Nissen label, but I know most of our cases from Petaluma delivered at the waterfront bore a red label.

Q. This particular lot of eggs on Pier 16 bore, according to your best recollection, a red label?

A. I believe that was what it was.

Q. In addition to a red label did they bear any marking similar to a marking in stencil "Medium

(Testimony of Henry Lester Pineda.)

Grade A"? Did they have any marks like that?

A. I don't recall.

Q. So that the identifying marks that you observed on the end of the cases were red markings. Now, if your knowledge you do not know the quality of those eggs, do you?

A. You mean as far as seeing the eggs? No.

Q. So that you were handing these particular eggs and you were told by Mr. Smiley to stack them in a certain way? A. Yes. [1044]

Q. And he said to stack them three high, did he not?

A. Three high with certain ones, and when he said top them, we would go up the other two with those.

Q. When he said top them you would do what?

A. We would go five high. We would take those eggs—we would take three high, and then he would say top them and we would put these two cases on top.

Q. Three high were placed in a row, and when Mr. Smiley would say top, you would then put two more cases on? A. Yes.

Q. What was the difference between the two cases on the top and the three cases below in each column of eggs?

A. The stencilling mark on top.

Q. What?

A. The stencilling mark on top.

Q. They all were stencilled with the same legend, were they not? A. That is right.

(Testimony of Henry Lester Pineda.)

Q. But some of them; as I recall your direct testimony, some of the cases were stencilled in a certain manner and some were stencilled in another manner, is that right? A. That is right.

Q. Some were kitty-cornered, were they not?

A. Yes.

Q. Some straight? A. That is right.

Q. Which did you put on top and which below?

A. I believe the kitty-cornered on top.

Q. So in the piling of these cases on the waterfront the effort was made to pile them so that the kitty-cornered eggs were on top—

A. That is right. [1045]

Q. And those that were stencilled in a straight way were on the bottom?

A. That was to a certain extent. Once we have a block set we go about five high with ones—the stencil just running parallel with the case. We just did that for the border, so after a while when we had our blocks set we would put most of these cases in front—they would all be kitty-cornered cases.

Q. At all events, the effort was made to pile those cases so that the cases marked in one way were together and those marked in another way together; that is right, isn't it?

A. Well, I don't know what you mean "together". The main effort was to try and hide these cases of eggs.

Q. I am not talking about hiding. They were all in plain view on the pier, were they not?

(Testimony of Henry Lester Pineda.)

A. To a certain extent. You can't see the middle cases of eggs by walking out there.

Q. You can see the five cases of eggs piled on top of each other?

A. Yes, around the outside, but you can't see the inside unless you get on top.

Q. The first three cases of eggs are cases that have a certain marking on them; then you pile two cases on top that have a different marking on them, is that right?

A. That is only in the back. That is only in the back.

Q. The back?

A. Yes. It all depends how many cases we had.

Q. Were those being stacked against a wall or out on a pier?

A. There has to be a front and back to any pile.

Q. They were out in the open on a pier, were they not?

A. Yes, it was about three feet from the wall.

Q. How many cases were involved in this truck and trailer?

A. I can't recall how many.

Q. What is your best recollection?

A. Quite a few hundred.

Q. Describe the truck and trailer.

A. Well, let me see now. The trailer was built and was covered—it was all covered. It was all more or less—not solid. You could take it apart. I mean the truck had these slats on it.

Q. Slats?

(Testimony of Henry Lester Pinola.)

A. You know, pieces of wood, heavy wood. It was a pretty big truck. It wasn't a semi, just a regular big truck with a trailer. Some fellow once told me it just met the requirements of the state law. I forget what law it was, as far as the length.

Q. Have you any idea of the capacity of that truck and trailer?

A. I knew it but I can't remember now. I have asked before.

Q. Anyway it would be more than a hundred cases?

A. Quite a few hundred.

Q. Maybe four hundred?

A. Maybe more.

Q. Regardless of the number you were piling them five high, those marked one way, the first three, those marked the other way the next two; then you had some system of piling cases in back of that, is that right?

A. Well, in front of it, yes.

Q. Well, in front or in back?

A. Yes—they can't be in back because the first ties we would put would be three feet from [1047] the wall, wherever the checkers would tell us to put them, and the pile would come up from there.

Q. In other words, you would start at the wall five high, the first three with a certain marking and the next two the other? A. Yes.

Q. The first row, how were they stacked?

A. About the same way for about maybe two or three tiers—I don't remember how many—and then

(Testimony of Henry Lester Pineda.)

once they were in the middle they would come all the way five high with what we call cutouts.

Q. You call them cutouts, but you mean eggs that had a certain label in a certain position?

A. A certain stencil in a certain position.

Q. Pardon me? A. A certain stencil.

Q. I mean the stencil was in a certain position. Those that were in a certain position, in addition to being on the bottom, were all piled in the middle, is that right? A. Yes.

Q. And then they were surrounded by eggs that were stencilled in a different manner, is that right?

A. That is right.

Q. Now, after you had done all of that work, Mr. Pineda, did anyone inspect the eggs?

A. Yes, but I don't know who.

Q. Were you there when it was done?

A. No, Mr. Nix—his orders were—I heard the orders were for Mr. Nix to take care of the inspector.

Q. Were you there when they were inspected?

A. No.

Q. Do you remember the time of this incident?

A. In the morning. [1048]

Q. I mean the month, the year?

A. That is what I say. It might have been May, it might have been June. All I know is I was going up to Woodacre at that time. That is why I placed it in 1940.

Q. Did you ever see the order placed for any eggs that were being delivered then?

(Testimony of Henry Lester Pineda.)

A. I very seldom saw any orders.

Q. Did you happen to see the orders for this particular quantity of eggs? A. No.

Q. Did you see any invoice covering this particular quantity of eggs? A. No.

Q. Did you see an inspector inspect that quantity of eggs? A. No.

Q. In other words, you have described everything that you saw on the pier substantially?

A. Well, no. Tommy got on the truck when Mr. Moncharsh arrived at the pier—Andrade got on the truck and wanted to help Mr. Smiley to unload, and Mr. Moncharsh told him to get off the truck, that that was Smiley's truck, and he would give us the eggs. Then Mr. Berman said, "Well, there is too many of us here for him to feed, so I think I will go about my work." So Mr. Berman left.

Q. Left by himself?

A. He had his own machine. I guess he did.

Q. Did Mr. Moncharsh leave?

A. He stayed awhile and then told Tommy to take me back to the plant, and Mr. Nix would stay.

Q. Mr. Moncharsh was there when you left?

A. No. I don't think [1049] he was there when I left.

Q. You went back to the plant with your friend Tom Andrade, is that right? A. Yes.

Q. And when you went back the eggs had not been inspected?

A. No, they had not.

Q. I would like to have you give me, just as

(Testimony of Henry Lester Pineda.)

closely as you can, the quantity involved in that particular situation. You have described these piles five high piling in the center; would you give me your best estimate of the number of eggs that were involved in that delivery of eggs by Nye & Nissen to someone on that wharf?

A. No, I can't. All I know is we had the truck and trailer full. That is as far as I can tell you. I mean I don't recall how many cases we had.

Q. To go back one question in relation to what you have termed fresh eggs and cold storage eggs, in your experience, Mr. Pineda, how many times have you ever seen an Army inspector inspect eggs in the plant of Nye & Nissen that were wrapped with the papers overlapping as you have described?

A. How many times?

Q. Yes?

A. Oh, I couldn't tell you how many times. We had sort of a little period there where they used these cases of eggs. I mean we didn't do it every year. That was something unusual.

Q. In the period of time, say, from 1938 until 1942, did you see Army inspectors inspect and stamp cases of eggs where pieces of paper had been drawn up over the eggs in each side of the box [1050] and stamped with their Veterinary Corps stamp where these cases joined ten times in that period?

A. No, no, more than that.

Q. Twenty?

A. Oh, I couldn't tell you how many times, but I mean just about one year—it might have been

(Testimony of Henry Lester Pineda.)

two years they done it—but I recall just about one year they done that kind of work.

Q. How many times in that year?

A. I didn't always help on the bench, on those orders. I just helped on a few. Sometimes when I am walking out of the place, doing my work, I would see those cases sit there, but I wouldn't know about how many times.

Q. And they were Army inspection cases?

A. The Army stamp, yes.

Q. In the two instances where Colonel Hand was involved there was another phase of that transaction that I did not touch on. In addition to the Army putting the stamp on, you addressed some of those cases, did you not? A. Yes.

Q. To whom did you address them?

A. I believe they were CC's. I know Mr. Goddard used to give me a little envelope with some of these little tags on. He would say some are to go to Stockton, some to Sacramento.

Q. Do you ever remember, Mr. Pineda, in connection with the two instances that we have devoted part of this morning and part of this afternoon to, where cold storage eggs were moved out to take the place of so-called fresh eggs, where you put a label on them, an address label, in which the destination of those eggs was a C.C. camp?

A. I can't say about these two, but the [1051] same type of a binding—the same type of bindings, yes.

Q. On the occasion that Colonel Hand was there,

(Testimony of Henry Lester Pineda.)

on the two occasions that you testified to after the eggs had been stamped by him, these eggs that you had taken out of the cooler and which you claimed that he stamped, you then proceeded to nail these cases up? A. That is right.

Q. And you put addresses on them, did you not?

A. Not right off the bat, no.

Q. Did you ever put any addresses on them?

A. On those cases of eggs I can't say whether I did or not, but like I say, they might have been those cases, I don't know.

Q. When you testified on direct examination in connection with that first instance you said after the boxes were all nailed up you put addresses on them; you are not now sure those were the cases?

A. I don't believe I said after I nailed them up I placed those labels on them. I know I placed labels on cases of that type. I know that, and I have done it.

Q. Did you place any address label on either of the cases of eggs involved in the two instances where Colonel Hand stamped his inspection mark on the center of the four pieces of paper where you had taken eggs out of the ice box for fresh eggs that were on the floor? A. I don't remember.

The Court: We will take a recess for a few minutes.

(Recess.) [1052]

Mr. Faulkner: Q. Now, on this occasion, Mr. Pineda, when you are down on that pier, there isn't

(Testimony of Henry Lester Pineda.)

any question, is there, that all of these rows of eggs were packed closely together?

A. That's right.

Q. So a person could not walk between them?

A. That's right.

Q. You know from your experience on the pier in the egg business that if the eggs delivered at a pier are to be inspected that they are uniformly stacked on the pier so the inspector can walk between them, and that if the eggs are not to be inspected they are packed in a close compact form?

A. Not necessarily, no. Sometimes they are already inspected and I guess they go back to get a recount, or to recheck. I know there are a lot of times we stacked them together and sometimes we place them two together, I guess, when they had no stamps there.

Q. Did any of these eggs that you were handling on the pier that day have either an Army or a Department of Agriculture stamp?

A. I don't recall, but the way we placed them I figured they might have.

Q. You don't recall either way? A. No.

Q. Do you not know from your experience on the pier that every time that eggs were to be inspected on the pier they were stacked in a manner so that the inspector would have accessibility to the different cases of eggs?

A. No, not all the time, no.

Q. You handled those cases and saw the stencil marks didn't you? A. Yes. [1053]

(Testimony of Henry Lester Pineda.)

Q. If you examined the cases with enough care to see the stencil mark, how was it you don't know whether they carried Department of Agriculture or Veterinary Corps stamp?

A. I asked about the stencil work.

Q. You asked about it? A. Yes.

Q. Couldn't you see it?

A. I asked Mr. Smiley.

Q. You could see it?

A. Yes, but I am not supposed to take anything for granted.

Q. You had to handle them and see them clearly to determine where to pile them?

A. Mr. Smiley would tell me where to pile them.

Q. He told you to pile a case with a certain mark one place and some with another mark another place, did he? A. Yes.

Q. So you had to look at the case to see how they were marked?

A. No. If he says "Down" I just put that down.

Q. Mr. Pineda, when you picked the case up you looked to see where it was going?

A. I was on the side. The truck comes almost about up to here on me. I grabbed a case, put it over here. We had to work fast. We weren't just walking around.

Q. Then you didn't see the stencil mark?

A. Yes. When the case comes down you will carry a case like this, when it comes down you put one there and one there. Perhaps more like that

(Testimony of Henry Lester Pineda.)

(indicating). At the beginning you make quite a few steps, so naturally you see where it goes.

Q. You see where it goes because of the manner in which it is [1054] stenciled?

A. Yes, after a while.

Q. Don't you see the stencil mark?

A. Yes, but I didn't—they might have been on just the opposite way. They might have placed them kitty-corney for the bad cases and straight for the other.

Q. You don't know what the quality of those eggs, from your own knowledge, were any different in one case than another, do you?

A. I worked for Nye & Nissen five years before that.

Q. You didn't see those cases five years before?

A. No, not those.

Q. In connection with those cases on that pier, didn't you know what their quality was by the manner in which you were packing them?

A. That was on orders from Mr. Smiley.

Q. But you looked at the stencil mark?

A. To a certain extent, yes.

Q. The stencil was on top of the case?

A. Yes.

Q. You don't know whether the mark of either the Department of Agriculture or the Veterinary Corps was on any of those cases?

A. I was not interested.

Q. But you were there and handling the case,

(Testimony of Henry Lester Pigeda.)

whether you were interested, or not, you were there and packing the cases in a compact form?

A. Yes.

Q. That is the way they were packed?

A. That is the way.

Q. They were never inspected in your presence?

A. No.

Q. You testified to an occasion when you did some work at night, [1055] do you remember an occasion in August, 1941, when you came down at night to do some work in the plant of Nye & Nissen? A. Yes.

Q. What? A. Yes.

Q. Who told you to come down that night?

A. Mr. Goddard.

Q. Did you come down? A. Yes.

Q. When you got there whom did you see?

A. I had worked all day. I was told to come back.

Q. When you got back that night after you were told to come back whom did you see at the plant?

A. I saw Mr. Goddard, Mr. Menges, Mr. Nix, and later on Mr. Monckarsh and Mr. Berman and the girls.

Q. Working at night was not an uncommon thing, was it? A. No, it was not.

Q. This was one night, it was a particular night when you were down there to do some overtime work? A. Right.

Q. You were paid overtime for it, weren't you?

A. In cash.

(Testimony of Henry Lester Pineda.)

Q. What? A. In cash.

Q. You were paid in cash, but you were paid?

A. That's right.

Q. Everyone else was paid?

A. I don't know.

Q. You did some work that night?

A. Yes.

Q. Did you see some eggs on the floor or in the cooler? A. On the floor.

Q. Did you observe any eggs before you came down that night?

A. No, I didn't pay any attention to eggs.

Q. So the eggs that your attention was directed to after you [1056] came back, I assume after dinner? A. Yes, after supper.

Q. They were eggs that you had paid no attention to up until that moment?

A. That's right.

Q. How many cases of eggs were there?

A. I don't remember how many cases.

Q. 50?

A. No; we had quite a few of them.

Q. A thousand?

A. No, probably maybe 200 or so, I don't know.

Q. Did they bear an inspection mark on them?

A. Yes, they did.

Q. What department? A. Army.

Q. Veterinary Corps? A. Yes.

Q. Did they have a date? A. Yes.

Q. What was the date?

A. I don't know the date.

(Testimony of Henry Lester Pineda.)

Q. Was it a date sometime the day before doing this work?

A. I didn't observe the date.

Q. Practically all the cases that were being used would have some kind of a stamp on, wouldn't they?

A. You mean cases that were being used?

Q. Yes, all used cases had some stamp on them?

A. No.

Q. Didn't they? A. No.

Q. Nine-tenths of the second-hand cases that Nye & Nissen used had stamps on either of the Department of Agriculture or the Veterinary Corps, isn't that correct? A. No.

Q. What percentage would have stamps?

A. It all depends where we pick them up. If you go to make a delivery at Letterman Hospital the cases come back from there, then they probably will all have stamps, an old stamp.

Q. Nye & Nissen were buying second-hand cases from the Army, weren't they?

A. I don't know whether they were buying them or not. I don't know how their orders read, whether they were entitled to those cases back.

Q. At all events, these cases had an Army Veterinary Corps stamp with a date?

A. That's right.

Q. Almost every one of those cases?

A. Yes.

Q. What did you personally have to do there?

A. I opened up the cases and placed them on the bench.

(Testimony of Henry Lester Pingdar.)

Q. Were the eggs candled?

A. No, transferred.

Q. Transferred from a case that had some stamp on into another case, is that correct?

A. These were new eggs.

Q. These were all new eggs? A. Yes.

Q. So the cases that you were transferring from were all new cases? A. Yes.

Q. The cases that you were transferring to, were they new cases? A. Yes.

Q. So the transfer was from a new case to a new case? A. Yes.

Q. Am I right? A. That's right.

Q. You aided in that transferring?

A. Yes.

Q. The box to which you were transferring the eggs, did they have an inspection mark?

A. No.

Q. Did they have a label on?

A. I don't recall whether they had labels. I believe they did, yes. [1058]

Q. Did the cases from which you were transferring have a label on?

A. Yes, I believe they did.

Q. What color?

A. I think it was a red stamp.

Q. Red? A. Yes.

Q. What was the color of the label on the cases you were transferring to?

A. It would be the same color.

Q. Same color. So the eggs transferred from a

(Testimony of Henry Lester Pineda.)

new box are transferred into a similar new box with a similar label? A. That's right.

Q. That label was red? A. Yes.

Q. What else did you do?

A. I topped them.

Q. You topped them?

A. The new ones, and I topped the new ones where the girls transferred them into.

Q. A little louder.

A. I transferred—I topped, that is, covered them. I believe that we wired them.

Q. What? A. We wired them.

Q. You took them out of one box and put them in this box, and then wired them?

A. Yes, I believe the box was wired.

Q. You wired the box? A. Yes.

Q. The transfer was into another case similar in type? A. Yes.

Q. And you wired them? A. Yes.

Q. Then what did you do with the cases?

A. Put them back on the floor.

Q. Out on the floor?

A. Well, I didn't take them out. We put them on the flat and pulled them up 15 or 20 feet away and [1059] let them stay there.

Q. When you had finished that operation you had taken out of an inspected lot and put them into similar boxes with labels but without an inspection stamp? A. That's right.

Q. You wired them? A. That's right.

Q. Having in mind that the transfer of cigs that

(Testimony of Henry Lester Pineda.)

you had placed into the type of box without the inspection stamp, what happened to those eggs, as far as you personally know?

A. I don't recall.

Q. Did you ever see them leave the plant of Nye & Nissen?

A. I can't say I did or did not.

Q. Do you know anything that happened to any particular case of eggs after you completed your work that night?

A. No—the case that bore the stamp?

Q. No, the case that did not bear the stamp.

A. No.

Q. After you had completed that, or during the course of that, there was a stage of the proceedings when you had empty cases, new cases that had a Nye & Nissen label and had a Government stamp?

A. Yes.

Q. What did you do with those cases?

A. When the girl transferred the eggs from the stamped case into the new case she would always have a case, an old case of eggs here which she would transfer eggs into this stamped case. When she shoved it out she would shove usually down the two cases of eggs, one stamped and one without the stamp.

Q. Was this done out in the candling room?

A. In the candling [1060] room.

Q. Where were you working?

A. Right outside.

Q. You were not in the candling room?

(Testimony of Henry Lester Pineda.)

A. I would go in sometimes, yes.

Q. How many girls were working?

A. I believe four girls, might have been three or four.

Q. Did you observe what they were doing?

A. Yes.

Q. The girls with the cases? A. Yes.

Q. Were they taking eggs out of the stamped case and putting them into a similar unstamped case? A. Yes.

Q. You say after that case would be shoved out that it would be taken on the floor?

A. Yes. When we transferred cases of eggs that way we had the room lit, it is not like candling. They don't need the candling light, there would be a big light going.

Q. The purpose of the transfer in the candling room was because the facilities were there to set out these cases? A. Yes.

Q. You were shoving the cases in and the girls were shoving them out? A. That's right.

Q. Am I correct? A. Yes.

Q. Did you see anything put in the cases that you, personally—did you, personally, see anything put in the cases that had an inspection mark?

A. Yes.

Q. What did you see put in? A. Eggs.

Q. Where were those eggs?

A. Those eggs were on the floor. [1061]

Q. The floor. Were they brought in to the girls?

A. No; we placed them outside.

(Testimony of Henry Lester Pineda.)

Q. Did you shove them in to the girls their so they would have access to them?

A. Yes. When we put a stamped case outside for them we always placed one of these cases outside so they pulled the two in.

Q. So they really had two cases of eggs and one empty case when they started? A. Yes.

Q. They separated from one to the other and then from one to the one they started with?

A. Yes.

Q. Up until you had started to work that night had you ever seen these other cases of eggs before that were in the boxes that didn't have a mark?

A. You mean in the old box?

Q. No. I don't know whether they were new or old. The second box of eggs, had you ever seen those before?

A. The box of eggs that were placed in a stamped case?

Q. Yes. A. Yes.

Q. You saw them before? A. Yes.

Q. Where did they come from?

A. They came from our candling room.

Q. When? A. During the week, I guess.

Q. Sometime during the week. In other words, you identify, you know those particular eggs, you had seen them before, is that right?

A. Yes.

Q. You had seen them in the plant of Nye & Nisen? A. That's right. [1062]

Q. You had seen them candled? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. You had participated in the candling?

A. No, I did not candle.

Q. I mean you had participated in the physical work related to candling? A. Yes.

Q. How do you remember that?

A. Because that is the only kind of work I could do. If I could have candled I would have done that.

Q. How do you remember on this particular night and this quantity of eggs that were transferred into boxes were eggs you had seen in the plant of Nye & Nissen?

A. Because that was the reason they were transferred and placed in those boxes.

Q. How do you know that?

A. How do I know it?

Q. Yes. A. I was told that.

Q. Who told you?

A. I guess it was Mr. Menges.

Q. When did he tell you?

A. During the time I was helping him.

Q. On that occasion?

A. He used to tell me all the things, no use in keeping everything a secret.

Q. I am talking about this particular occasion.

A. I don't remember who told me.

Q. When you were down there with Mr. Moncharsh, I think you mentioned you were down there prior to that time, you were asked to come to work that night, did they say that, "We are transferring these eggs to put in some boxes"? [1063]

A. They don't say it that way.

(Testimony of Henry Lester Pineda.)

Q. What were the words?

A. Back in 1935 when I started they did give me orders like that, because I was new.

Mr. Faulkner: I ask that that go out, your Honor, as not responsive. What did they say on this occasion?

A. They told me they are supposed to be our cut-outs.

Q. Supposed to be what?

A. They are cut-outs.

Q. What is the cut-out, a grade B egg?

A. I don't know.

Q. There isn't any lower grade in the deck than a Grade B egg, is there?

A. Maybe you have seen some of the eggs.

Q. Isn't that right?

A. Yes. If you take some of the eggs that come from an incubator that is lower, it would probably take Grade C mark.

Q. What are Grade C eggs?

A. I don't know.

Q. Do you know what they are? A. No.

Q. You have marked a great many cases Grade C? A. Yes, I believe they are bakers' eggs.

Q. Did you do that for Buckwald & Company, or Nye & Nissen?

A. I never did that type of work for Mr. Buckwald.

Q. You worked for the Buckwald Egg Company?

A. Not that type of work.

(Testimony of Henry Lester Pineda.)

Q. What kind of work?

A. I did separating.

Q. You worked in another egg plant besides Nye & Nissen? A. Mr. Buckwald, yes.

Q. How long?

A. I would say about a year. [1064]

Q. Coming back to this incident, there were some eggs that you did not participate in the candling of, as far as determining their quality, that were placed in certain boxes, from certain boxes into boxes that had the stamp on, is that right?

A. Yes. I never did candle the eggs.

Q. Then you don't know of your knowledge the quality of any of these eggs that we are talking about on this occasion, do you?

A. All I know is from what somebody told me.

Q. The eggs, however, were transferred, according to your testimony, into the box that had the Government label on?

A. That is right.

Q. Then what happened to the cases that had the Government inspection mark on?

A. We topped them, wired them, and put them on flats.

Q. And where did you put the flats?

A. We put them up towards the middle of the floor, and I believe they started loading the truck with them.

Q. What?

A. I believe they started loading the truck with them.

(Testimony of Henry Lester Pineda.)

Q. That night? A. Some of them, yes.

Q. Did you help load the truck?

A. I don't recall if I did or not that night, but we always loaded to make sure we got an early start in the morning, if the order had to go out early.

Q. Did you see those eggs piled on a truck that night?

A. I don't recall if I saw those eggs.

Q. Did you work the next day?

A. The next day, yes.

Q. Did you see the eggs piled on a truck the next day?

A. I helped deliver some eggs, but I am not sure if I helped on that shipment there.

Q. Do you know definitely of your own knowledge what happened to those eggs that had the Government mark on them?

A. Not definitely, no.

Q. You do not know who bought them?

A. No, I don't.

Q. You do not know who they were delivered to? A. No. [1665]

Q. The last clear recollection you have of the particular eggs was on the night you left there were they somewhere on the premises of Nye & Nissen, is that right? A. That is right.

Q. Now, you described that incident, Mr. Pineda, relating to going down to an Army pier. Do you remember that, a pier guarded by some soldiers?

A. You mean when I was in the back of a truck?

Q. Well, you were in the back of a truck, I think,

(Testimony of Henry Lester Pineda.)

and you said that the pier was over near Fisherman's Wharf. A. That incident, yes.

Q. Did you have a pass to go on the waterfront?

A. No.

Q. Did you not get a pass to go on the waterfront at the same time that all the employees of Nye & Nissen got a pass?

A. I got a pass when Mr. Menges and Mr. Goddard had a pass, but we had some passes there before this.

Q. What?

A. Mr. Berman had a pass, Mr. Smith had a pass, and I don't know who else had a pass.

Q. Then you did have a pass?

A. No, not at that time. I got mine with Mr. Menges and Mr. Goddard.

Q. I did not ask you about the time. I said did you have a pass to go on the waterfront?

A. At that time, no.

D. Did you at a subsequent time?

A. Later on, yes.

Q. When did you get a pass to go on the waterfront?

A. Some time in 1942, I believe. It was around April, I guess.

Q. When did you require a pass to go on the waterfront? A. I [1066] don't recall.

Q. Before you had a permanent pass to go on the waterfront didn't you have a temporary pass to go on the waterfront? A. No, I did not.

Q. What? A. No.

(Testimony of Henry Lester Pineda.)

Q. Didn't every employee of Nye & Nissen prior to getting a permanent pass have a temporary pass?

A. Maybe we might have had one the time we went down to apply for it—they might have given us a temporary pass before we got the regular pass—but before that time we didn't have any pass. That is why we were always arguing about it.

Q. Some time in April you had a pass to go on the waterfront? A. Yes.

Q. So regardless of the uncertainty as to time or any other incident, you know this incident occurred then before April, 1942?

A. Before I had my pass, yes.

Q. And at the time you were riding on that truck there is no question in your mind that you did not have a pass to go on the waterfront?

A. That is right.

Q. And further there is no question in your mind that you were riding down to the waterfront at the time when a pass was required?

A. That is right.

Q. And this truck was loaded with a circle in the middle so you could get on the waterfront without a pass, is that right?

A. Not the one down at Fisherman's Wharf. You were just talking [1067] about the one at Fisherman's Wharf. The other was some navy—I think it was 48 or something.

Q. How did you get down on the pier where the Army were, Fisherman's Wharf?

(Testimony of Henry Lester Pineda.)

A. This was on the back of the truck where the doors opened from the back.

Q. You were down to help unload that truck, weren't you?

A. That truck and other trucks to follow.

Q. That truck and other trucks to follow?

A. We had about four or five that were supposed to stay to help them unload.

Q. You were in the back of that truck so you could avoid displaying a pass, is that right?

A. Once I am on the dock no one asked us for a pass.

Q. Is the reason you were in the back of the closed truck in order that you would not have to show a pass?

A. That was one of the reasons, yes.

Q. Who told you to do that?

A. Mr. Goddard.

Q. He told you if you rode in the back of the truck you wouldn't have to show a pass?

A. That is right.

Q. You remember that distinctly?

A. That is right.

Q. And therefore you rode in the truck, and did you get down to that Army pier? A. Yes.

Q. What was in the truck with you?

A. I think it was eggs, and I believe Mr. Nix was back there.

Q. He was there with you?

A. I believe he was. We had another man with me then who kept hollering—I know I am small. It

(Testimony of Henry Lester Pineda.)

wasn't so bad for me. But this other man kept hitting his head whenever we went over a bump.

Q. You went down in the truck and you were riding with the merchandise in the truck. Now, that only happened on that one occasion, didn't it?

A. What do you mean?

Mr. Hippeli: What was that question?

Mr. Faulkner: Withdraw the question.

Q. You were over on an Army pier near Fisherman's Wharf and you got over there in a truck in which you rode in the back of that truck with another man, is that right? A. Yes.

Q. You do not remember the man's name?

A. No, I don't. I believe it was Mr. Nix, because he always complained about wanting a pass before then.

Q. But I mean your best recollection is it was Mr. Nix?

A. Yes. I'm not sure about it, but I think it was him.

Q. Had you ever seen the eggs that were in that truck before you got in there where they were?

A. Yes, we had them at the plant.

Q. What? A. We had them at the plant.

Q. Did you see them there?

A. Yes, I helped load them.

Q. Were they candled in Nye & Nissen's plant?

A. I don't recall whether they were or not, but—

Q. Did they have a label on?

A. Yes, they had a green label.

(Testimony of Henry Lester Pineda.)

Q. Like this here in evidence (indicating)?

A. That is right.

Q. Did they have an inspection mark on them?

A. Some did and [1069] some didn't.

Q. Did they have a "V.C.", an Army inspection mark on them?

A. I don't recall. To my knowedge I believe they had the other stamp.

Q. The Department of Agriculture?

A. I don't recall what stamp they had on them. I know some were stamped and some were not.

Q. Did you observe the date of the stamp?

A. No.

Q. So that you were riding that truck with another man in the back of the truck, a truck that had a lot of eggs on, and your best recollection is they had a green label and some of the cases were stamped, and some were not stamped, is that right?

A. That is right.

Q. Did you help unload them? A. Yes.

Q. Do you know who the eggs were for?

A. No.

Q. Did you see the order? A. No.

Q. Did you see anyone receipt for them?

A. No.

Q. Did you see a receipt signed on the pier for the reception of those eggs by anybody?

A. I am not the driver.

Q. I did not ask you if you were the driver. Did you see anyone sign a receipt for the eggs?

A. No, I didn't.

(Testimony of Henry Lester Pineda.)

Q. Yo udid not. Now, what did you do on that pier with those eggs that were riding in the back with you?

A. I placed them on the dock.

Q. Did the man with you, whether it was Mr. Nix or not, help you?

A. Yes, and the driver, and we had someone else there—we had [1070] about four or five men there.

Q. Were there some Army men around there?

A. Yes, but they didn't watch us.

Q. I didn't ask you whether they watched you. Were there some Army men there?

A. There is always men on the dock and it was an Army dock.

Q. Were there soldiers? A. Yes.

Q. Were there a lot of them?

A. I don't recall how many.

Q. Was this a busy Army pier in time of war?

A. Yes, it was busy.

Q. You were busy unloading the eggs?

A. That is right.

Q. When you got through what did you do?

A. Waited for some other truck to come in.

Q. Did you help unload that? A. Yes.

Q. Did you observe those cases? A. Yes.

Q. Did they have marks on the end?

A. Some did, some didn't.

Q. Did they have labels on the end?

A. Yes.

Q. What color labels?

A. I believe they were green.

(Testimony of Henry Lester Pineda.)

Q. You think they were green? A. Yes.

Q. Did they have Army inspection stamps?

A. I don't recall.

Q. You do not recall the second truck?

A. No, neither the first one.

Q. Did you help on that? A. Yes.

Q. When you got through unloading the truck, or whatever it was, that you rode in and this second one, when you were all through, [1071] what did you do? A. We got in the truck.

Q. Then where did you go?

A. Went out of the piet.

Q. That is that incident, is it? A. Yes.

Q. Now, you have an incident where you went down to a Navy pier? A. That is right.

Q. And someone shot a gun or something?

A. That is right.

Q. Do you remember that incident?

A. Yes.

Q. When did it occur?

A. Like I say, it must have been maybe January or so.

Q. Was the war on?

A. I don't recall. I know it was before we got our pass. We got our pass in April.

Q. Do you remember whether the war was on, Mr. Pineda? A. I don't remember.

Q. Do you think it was before the war started or after?

A. It was before I got the pass.

(Testimony of Henry Lester Pineda.)

Q. Well, you did not have a pass fifteen years ago, did you? A. No.

Q. I just want to know whether it was before December 7 or not.

A. As I said, I don't know. They didn't ask for a pass on the waterfront fifteen years ago either.

Q. When was the first time that you knew they required a pass on the waterfront?

A. When I was told by Nye & Nissen.

Q. When was that? A. I don't know.

Q. What year? A. I don't know.

Q. This time you were riding in a different kind of truck? [1072]

A. Yes, I was riding in Mr. Smiley's truck.

Q. That is a large one? A. A large on.

Q. And you were riding with Mr. Nix?

A. Yes.

Q. A circle had been made for you?

A. Yes.

Q. And the eggs had been piled in there around you and Mr. Nix, is that right?

A. Well, the square was—we had a square there first and then we jumped in. I mean we didn't sit in there and have them pile eggs around us. We left enough space so we could sit in there.

Q. You left enough space so you could sit in?

A. We did.

Q. And you rode on the truck?

A. Rode on the truck.

Q. Was it a closed truck?

A. No, it wasn't.

(Testimony of Henry Lester Pincks.)

Q. It was one of the open trucks, wasn't it?

A. An open truck.

Q. Were you sitting down?

A. Yes, we were.

Q. And you got down on this Navy pier?

A. That is right.

Q. That is there by Third and Townsend, is that correct?

A. It is up further, near the last pier on the dock.

Q. That would be Islais Creek; 99, was that it?

A. 99?

Q. I think it is 99. 98? 99-A?

A. That is not the waterfront dock I am talking about.

Q. You tell me which one?

A. I said it is around 48-B, 48-B or 50, right around there.

Q. In other words, it would be around 200 yards from Nye & Nissen's plant, isn't that right?

A. Oh, I don't recall how many yards it is from there. [1073]

Q. Nye and Nissen's plant is at Fourth and Townsend? A. Yes.

Q. And Pier 48-B is right across from the depot, isn't it?

A. It isn't that one. It isn't that one. It is the one in back of that.

Q. By "in back of that" do you mean down—which side of the creek was it on? You know where the drawbridge is at Third and Townsend?

(Testimony of Henry Lester Pineda.)

A. Yes, but that is not Islais Creek, is it?

Q. What?

A. That isn't Islais Creek that you just mentioned now.

Q. Do you know where the drawbridge it?

A. Yes.

Q. Is Pier 48-B on the south side of the drawbridge or the north side?

A. The one I am talking about is the one before you come to the drawbridge.

Q. The one before you come to the drawbridge?

A. Yes, right where the waterfront is.

Q. That is where you went on that truck?

A. Yes.

Q. The distance you travelled in that truck that was packed in that manner was about 200 yards, wasn't it?

A. Probably more than that.

Q. Well, it is one block to the station and a short block to the pier, isn't it?

A. Don't—I'm not saying the pier that is on Third Street. I am saying the one that is along the Embarcadero. I am not saying the one on Third Street; the last pier on the Embarcadero.

Q. The last pier on the Embarcadero?

A. That is the one. [1074]

Q. Right before you come to the creek, is that right?

(Testimony of Henry Lester (Negro).)

A. The last one before you come to the enclosure there.

Q. That was in charge of a Navy sentry; is that correct?

A. They had a Navy man outside, yes.

Q. Did you observe the eggs that were with you and Mr. Nix on the truck? A. Yes.

Q. You do not know whether they were stamped with the Government stamps or not, do you?

A. Yes, I recall their being stamped. [1071-A]

Q. What?

A. Department of Agriculture stamp.

Q. All of them?

A. Most of them, or some of them.

Q. Some of them had a Department of Agriculture stamp? A. Yes.

Q. Did you observe the date?

A. No, I never did.

Q. Did you help unload that truck?

A. Yes.

Q. Did Mr. Nix help you? A. Yes.

Q. And who was the driver?

A. Mr. Smiley.

Q. Did he help you? A. Yes.

Q. Where did you load them? Onto the pier?

A. Yes.

Q. Did you load them in any particular form?

A. Yes.

Q. I mean unload them in any particular form?

A. Yes.

Q. Were they close together?

(Testimony of Henry Lester Pineda.)

A. Yes, they were.

Q. In a compact pile, is that right?

A. I don't know if they were compact or not. We were loading them, so some of the stamps, whichever cases had the stamps we had to put part of outside.

Q. Did you select cases that had stamps on and put them on the outside?

A. No, they came off, and if they had a stamp they would go to one portion of the pile and if they didn't have the stamp we would go towards the other.

Q. Then you made two piles, is that right?

A. One pile, but two sides to it.

Q. One pile but two sides to it? A. Yes.

Q. By that do you mean if this were one stack of eggs, would [1075] the next row of eggs be right flush with the other? A. That is right.

Q. About how many eggs do you think were in that truck? How many cases?

A. Oh, I would say, oh, 150 or 200, I guess. I don't know.

Q. Did you pile them against the wall on the pier? A. No.

Q. You piled them out in the open?

A. That is right.

Q. You took certain cases, you say, that had a stamp on and you put them on the outside?

A. That is right.

Q. Which was the outside?

A. The outside?

(Testimony of Henry Lester [illegible])

Q. Yes. You are out on an open pier. You pile eggs up. Which do you call the outside?

A. The outside if you pile them three high there is always two outside ones that would be out and the one in the middle would be inside. For the outside ones sometimes you go three or four high with bad eggs—I mean eggs without the stamp—and then two high with eggs with the stamp. It all depends how they were coming out. If they were coming out too many with the stamps, Mr. Smiley would set them aside on the truck and give them to us after a while.

Q. Is that what happened on that occasion?

A. Yes.

Q. Were those eggs delivered to anybody?

A. Delivered? They were delivered on the pier.

Q. Did anyone sign a receipt for them?

A. Not that I remember.

Q. Did anybody inspect them?

A. I don't recall. No, I don't [1076] believe they were inspected.

Q. Pardon me?

A. I don't believe they were inspected.

Q. When you left you left a quantity of eggs on a pier?

A. Yes, but there is always a checker there. The checker has to sign for it.

Q. There was a checker there to sign for the eggs? A. Yes, that is right.

Q. Did you see him sign for these eggs?

A. I don't remember, no.

(Testimony of Henry Lester Pingda.)

Q. But you know there was a checker?

A. Yes.

Q. And you know he checked the number of cases? A. That is right.

Q. As a matter of fact, always on the pier there is a checker, isn't there?

A. Yes, but they don't always hang around, if you have a big order to deliver, because all they do is count stacks.

Q. Regardless of that, there is always a checker?

A. Not while we are unloading the whole truck, no.

Q. There is always a checker on the pier, whether he watches what you do, or not, isn't there?

A. Not necessarily. Some of them go for a smoke. They go to the outside of the pier and smoke, because they can't smoke on the inside.

Q. There is always a checker on the pier, whether he observes what you do, or not?

A. Not necessarily, no. I know, because I am longshoring. I see checkers every day. They don't stay [1077] on the pile. They go off for a smoke.

Q. They are still on the pier, aren't they?

A. That is outside the pier.

Mr. Rippeli: I object to that as asked and answered.

Mr. Faulkner: Q. What?

A. They have a sign "No smoking" on the pier. They go outside and smoke. That can't be the pier.

Q. There is always a checker assigned to duty

(Testimony of Henry Lester Lunday.)

on the pier, regardless of whether he performs it, or not, isn't there? A. That is right.

Q. He is the man who is supposed to sign?

A. That is right.

Q. As a matter of fact, whenever eggs are delivered to a ship, the ship's steward is supposed to sign, is he not?

A. I don't know who is supposed to sign for it.

Q. Do you know who was checking these eggs, a checker or a ship's steward?

A. I don't know.

Q. But somebody was checking these particular eggs? A. That is right.

Q. When you went down on this particular occasion, describe what happened in the truck from the time you left the plant of Nye & Nissen until you had unloaded those eggs, from the time you left the plant?

A. Next Mr. Nix and I got in the middle of this truck and we got down to the pier, and we had to wait outside a while, and while we were waiting the shot went off and Mr. Nix and I were frightened. We didn't know. [1078]

Q. You were frightened?

A. Yes. We didn't know if they were shooting at us, or not, and Mr. Smiley got up on the truck to give us—we always did that—any time we had to wait in the pier we would lie on the truck and get some sunshine. He told us to lie up there and take it easy. Some fellow let a gun go off by mistake.

(Testimony of Henry Lester Pineda.)

so when we were in the pier unloading the eggs we took a look to see who this fellow was.

Q. Whom he was shooting at?

A. No, the sentry on guard these—we saw some fellow there and Mr. Smiley said he was demonstrating to someone else the different orders, or something, and the gun went off accidentally.

Q. On this occasion was there any other person on that truck except Mr. Smiley, Mr. Nix, and Mr. Pineda? A. No.

Q. When you got down to the waterfront and you unloaded the truck was there anyone connected with Nye & Nissen there other than Mr. Nix, Mr. Pineda, and Mr. Smiley? A. No.

Q. During this whole occurrence, from the time that you left the plant of Nye & Nissen, nothing happened in the presence of any of these defendants, did it?

A. Well, not after we left, no, but before we left something.

Q. I didn't ask you before you left. After you left. Now, Mr. Pineda, can you give me an idea of the number of cases involved in that order?

A. I would say a couple of hundred, or so.

Q. Do you know what shipping company operated that piet? A. No.

Q. Do you know the proportion of the number of cases that bore a [1079] Department of Agriculture stamp to those that did not?

A. No, I don't.

Q. After you had ridden from Nye & Nissen

(Testimony of Henry Lester Pineda.)

down in that truck, and after the truck had come to a standstill, and after your period of fright, how did you get out of the hole in that truck?

A. Just climbed up on top.

Q. In other words, you climbed up to the top of the eggs packed in that truck to get out, is that right? A. That is right.

Q. And you did that on the pier? A. Yes.

Q. So that was your method of getting out?

A. On that truck, yes.

Q. Mr. Nix climbed out the same way?

A. Yes, we did.

Q. Pardon me? A. Yes.

Q. How many cases were there between the place where you were cooped up and the back end of that truck?

A. Oh, I would say either two or three tiers. I don't remember how many.

Q. Do your remember an incident in November, 1941, at the plant of Nye & Nissen, Mr. Pineda——

The Court: What have you in mind? Describe it more definitely.

Mr. Faulkner: I can't, your Honor. That is all my notes show, an incident in 1941. That is all he has described it as.

The Court: What incident was it? [1080]

Mr. Faulkner: Q. Do you remember any incident in November, 1941?

A. I remember a lot of things in November, 1941.